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LEGAL IMMUNITY GIVEN TO WITNESSES NEED PROTECT THEM ONLY IN THE JURISDICTION WHERE TESTIMONY IS GIVEN.

The late case of *Jack v. State of Kansas,* 26 Sup. Ct. 73, decides that it is not a deprivation of liberty without due process of law to compel a witness to testify under the Kansas anti-trust act, where the statute is construed by the state courts to render material only such questions as relate to transactions within the state, and grants full immunity from prosecution in the state courts; although there is danger that the testimony given in the examination might incriminate the witness as a violator of the Federal anti-trust act. The principal ground for so deciding is the fact that it is highly improbable and it cannot be presumed that under such circumstances any Federal prosecution would ever take place. Justices Brewer and McKenna dissented.

It is an ancient principle of the law of evidence, that a witness shall not be compelled in any proceeding to make disclosures or to give testimony which will tend to criminate him or subject him to fines, penalties, or forfeitures. *Rex v. Slaney,* 5 Carr and P. 213. It will be observed that the common-law rule extends a broader privilege to the witness than the words of the Constitution. By the common law a witness in any case, in any court, was entitled to refuse to answer where the answer would have a

tendency to criminate him. The common-law rule was embodied in 14 and 15 Vict. c. 99, sec. 3. It is therefore apparent that the clause in the Constitution limits and qualifies the common-law rule. Under the Constitution, it is only "in a criminal case" that a witness can refuse to answer. Chief Justice Marshall in *Burr's Trial,* 1 Burr's Trial, 244, gave his views in this matter as follows: "What testimony may be possessed, or is attainable, against any individual the court can never know. It would seem, then, that the court ought never to compel a witness to give an answer which discloses a fact that would form a necessary and essntial part of a crime which is punishable by the laws."

The extent to which the witness is compelled to answer such questions as do not fix upon him a criminal culpability is within the control of the legislature. *State v. Nowell,* 58 N. H. 314. It is impossible that the meaning of the constitutional provision can only be, that a person shall not be compelled to be a witness against himself in a criminal prosecution against himself. It would doubtless cover such cases; but it is not limited to them. The object was to insure that a person should not be compelled when acting as a witness in any investigation, to give testimony that he had himself committed a crime. The privilege is limited to criminal matters; but it is as broad as the mischief against which it seeks to guard. *Counselman v. Hitchcock,* 142 U. S. 547.

The case under discussion is within the reasoning of the case of *Brown v. Walker,* 161 U. S. 591. In that case it was contended on the part of the witness that the statute did not grant him full immunity against prosecutions in the state courts, although it granted him full immunity from prosecutions by the Federal government. This contention was held to be without merit, on the ground that the danger of such a prosecution was too unsubstantial and remote. Four of the judges dissented. Justice Shiras in a forcible dissenting opinion said: "It is urged that, even if the state courts would not be compelled to respect the saving clause of the Federal statute, in respect to crimes against the state, yet that such a jeopardy is too remote to be considered. The force of this contention is not perceived. On the contrary, such is the nature of the commerce which is controlled by the Interstate Commerce law, so intimately involved are the movements of trade and transportation, as well within as between the states, that just such questions as those which are now considered may be naturally expected to frequently arise. It is certainly speaking within bounds to say that the effect of the provision in question, as a protection to the witness, is purely conjectural. No courts can

foresee all the results and consequences that may follow from enforcing this law in any given case. It is quite certain that the witness is compelled to testify against himself. Can any court be certain that a sure and sufficient substitute for the constitutional immunity has been supplied by this act; and if there be room for reasonable doubt, is not the conclusion obvious and a necessary one?" The presence of dissenting opinions in nearly all these cases, in the face of the doctrine of *stare decisis,* seems to indicate that plain logic is not wholly on the prevailing side of the question.

CONSTITUTIONALITY OF MUNICIPAL REGULATION OF MILK BUSINESS.

The sanitary code of the city of New York confers discretionary power upon an administrative board to grant or withhold permission to sell milk within the city. It is held in *People ex rel. Lieberman v. Van de Car,* 26 Sup. Ct. 144, that this is a proper subject for regulation within the police power of the state and, in the absence of any showing of arbitrary or oppressive exercise of such power, it will not be considered violative of the right to due process of law guaranteed by the Fourteenth Amendment of the Federal Constitution. It is further held that it is not denying the equal protection of the laws guaranteed by the Constitution to single out the milk business so long as all dealers in the city are equally affected by such regulation. Equal protection of the laws is secured so long as the principle of equality is preserved among all those engaged in the business. *Powell v. Pennsylvania,* 127 U. S. 678; *Mo. Pac. Ry. Co. v. Humes,* 115 U. S. 512.

Dealing in milk in a large city is manifestly such an occupation as necessitates most careful regulation. Wholesome milk should be insured to the people who are practically helpless to protect themselves. It is proper for the legislature to delegate this power to a muncipal board, investing them with power to pass ordinances not only restricting and conditioning its supply and the manner of transporting and keeping it but also licensing its sale. *City of Newton v. Joyce,* 166 Mass. 83; *Gundling v. Chicago,* 177 U. S. 183; *New Orleans v. Faber,* 105 La. 208.

A sort of absolute control over persons and property in order that the health of the community may be secured is one of the fundamental necessities of government and has from very early times been vested in a board or in officers, who are not bound to wait for the slow course of justice but have power to take summary jurisdiction. In such matters a due process of law is simply a correct and orderly proceeding observing all the securities for pri-